

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
A. J. VERBEEK,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB Nos. 79-186 & 80-1

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of respondent's Sections 9.03B, 8.02(5), and 8.05(1) of Regulation I having come on regularly for formal hearing on September 3, 1980, in Seattle, Washington, and appellant A. J. Verbeek represented by its attorney, Kenneth E. Phillipps, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, with Hearing Examiner William A. Harrison presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 24th of November, 1980,

1 and more than twenty days having elapsed from said service; and

2 The Board having received no timely exceptions to said Proposed  
3 Order and the Board being fully advised in the premises; NOW  
4 THEREFORE,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed  
6 Order containing Findings of Fact, Conclusions of Law and Order dated  
7 the 24th day of November, 1980, and incorporated by reference herein  
8 and attached hereto as Exhibit A, are adopted and hereby entered  
9 as the Board's Final Findings of Fact, Conclusions of Law and Order  
10 herein.

11 DATED this 15<sup>th</sup> day of January, 1981.

12 POLLUTION CONTROL HEARINGS BOARD

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15 NAT W. WASHINGTON, Chairman

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18 DAVID AKANA, Member

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21 MARIANNE CRAFT NORTON, Member

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26 FINAL FINDINGS OF FACT,  
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PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of Respondent's Sections 9.03B, 8.02(5) and 8.05(1) of Regulation I came on for hearing before the Pollution Control Hearings Board, Hearing Examiner William A. Harrison presiding alone, convened at Seattle, Washington, on September 3, 1980.

Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney, Kenneth E. Phillipps.

Respondent appeared by its attorney, Keith D. McGoffin. Reporter Ruth I. Johnson recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 testimony heard and exhibits examined, the Pollution Control Hearings  
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent pursuant to RCW 43.21B.260 has filed with this Board a  
7 certified copy of its Regulation I containing respondent's regulations  
8 and amendments thereto of which official notice is taken.

9 II

10 Appellant, A. J. Verbeek, operates a 10 acre solid waste disposal  
11 site and waste hauling business in Snohomish County. His sole  
12 customer is a pulp mill of the Scott Paper Company. The wood waste  
13 (mixed with stone and dirt) from the Scott mill is the only matter  
14 disposed of at the site, and appellant is the only authorized user of  
15 the disposal site. Appellant's two employees truck the wood waste  
16 from the Scott mill, dump it at the disposal site then level it with a  
17 bulldozer. Appellant personally keeps office hours during weekdays at  
18 an office some 7 miles from the disposal site. Appellant and his  
19 employees do not use the site on weekends.

20 Although the wood waste from the Scott mill is sometimes hot or  
21 smoldering appellant directs his employees to cool the wastes before  
22 leveling them with the bulldozer. There is no fence around the site,  
23 nor watchman, but the site is posted against trespassing.

24 III

25 On September 16, 1979, a Sunday, respondent's inspector was  
26 notified of a fire at the site by the local fire district. Arriving  
27

1 at 8:00 a.m. the inspector observed a fire in progress, some 60 feet  
2 in diameter, consisting of an unsegregated portion of a high bank of  
3 wood waste abutting the roadway through the site. There was no one  
4 present at the site.

5 The inspector observed that the fire emitted white or light blue  
6 smoke of 100% opacity for 20 consecutive minutes. The inspector later  
7 determined that no permit had been issued for the fire by either  
8 respondent or the local fire district. The appellant later received a  
9 Notice of Civil Penalty citing excessive opacity, Section 9.03(b), and  
10 failure to have appropriate permits, Sections 8.02(5) and 8.05(1) and  
11 assessing a \$250 civil penalty. From this appellant appeals.

#### 12 IV

13 On October 24, 1979, while on routine patrol, respondent's  
14 inspector again observed a fire at appellant's disposal site. This  
15 fire also consisted of an unsegregated portion of the wood waste, some  
16 30 feet in diameter and emitting light blue smoke at 80% opacity for  
17 15 consecutive minutes. No one was at the site. Appellant received  
18 a Notice of Civil Penalty citing Section 9.03(b) and 8.05(1) and  
19 assessing a civil penalty of \$250. This notice was received by  
20 appellant on December 1, 1979. Appellant's Notice of Appeal was  
21 placed in the mail on December 31, 1979, and received by this Board on  
22 January 2, 1979. Respondent has moved to dismiss that appeal for  
23 untimeliness.

#### 24 V

25 Any Conclusion of Law which should be deemed a Finding of Fact is  
26 hereby adopted as such.

27 PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 From these Findings the Board comes to the following

2 CONCLUSIONS OF LAW

3 I

4 Respondent's regulations are adopted under the authority of the  
5 Clean Air Act, chapter 70.94 RCW. Such regulations cannot be applied  
6 in contravention of that Act.

7 On the day of the first fire in question, September 16, 1979, RCW  
8 70.94.040 declared it unlawful for any person knowingly to cause air  
9 pollution in violation of the act or implementing regulations.  
10 Respondent was therefore obligated to apply its regulations so that  
11 only knowing violations are prohibited. Puget Sound Air Pollution  
12 Control Agency v. Kaiser Aluminum and Chem. 25 Wn. App 273, 607 P. 2d  
13 870 (Div. II, 1980).

14 While appellant was generally aware of the possibility that fire  
15 could break out due to spontaneous combustion or trespassers while the  
16 site was unattended, a fire was not the necessary or natural  
17 consequence of leaving the site unattended. We therefore cannot  
18 conclude that appellant knowingly caused or allowed the fire of  
19 September 16, 1979, and the violations and civil penalty should  
20 therefore be vacated.

21 II

22 Effective June 12, 1980, the Legislature amended RCW 70.94.040 to  
23 delete the element of "knowingly." It would therefore be prudent for  
24 appellant to make every reasonable effort to prevent fires at the  
25 disposal site in the future, including at times when the site is  
26 unattended.

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III

The rules for procedure before the Board state, at WAC 371-08-080:

The Notice of Appeal shall be filed within  
thirty days from the date the copy of the order or  
decision of the . . . pollution control board (or  
authority) was communicated to the appealing party.  
(emphasis added)

We have long held that the term "filed," above, means actual receipt  
by this Board. William C. Markham v. PSAPCA, PCHB No. 483 (1974);  
Coast Investment Co. (Viceroy Apartments) v. PSAPCA, PCHB No. 470  
(1974); Trinidad Corp. (SS HOUSTON) v. PSAPCA, PCHB No. 715 (1974);  
Trans American Development & Construction, Inc. v. PSAPCA, PCHB 773  
(1975); Hillis Homes, Inc. and First Bank Mortgage Co. v. PSAPCA, PCHB  
No. 945 (1976); M. G. Development Corp., v. PSAPCA, PCB No. 1118  
(1977) and Department of the Navy v. PSAPCA, PCHB No. 77-173 (1978).

Appellant does not dispute that his appeal regarding the fire of  
October 24, 1979, was mailed on the 30th day and received by the Board  
on the 31st day. The Board therefore has no jurisdiction over the  
appeal relating to October 24, 1979,, and it must be dismissed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is  
hereby adopted as such.

From these Conclusions the Board enters this

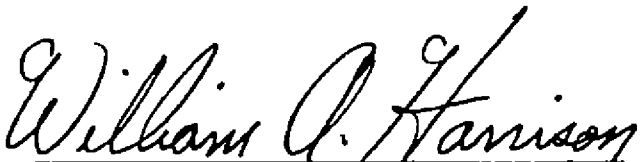
ORDER

The alleged violation and \$250 civil penalty relating to September 16, 1979, (No. 4464) are each hereby vacated.

The appeal of the alleged violation and the \$250 civil penalty relating to October 24, 1979, (No. 4538) is dismissed.

DATED this 24<sup>th</sup> day of November, 1980.

POLLUTION CONTROL HEARINGS BOARD

  
WILLIAM A. HARRISON,  
Presiding Officer